

REMARKS

In response to the final rejection made in the Official Action dated February 25, 2004, Applicant filed a Request for Reconsideration After Final Rejection on May 13, 2004. In an Advisory Action responsive to the Request For Reconsideration, the Examiner maintained the rejection of the claims raised in the final action.

Applicant thereafter filed a Request For Continued Examination, presenting the current Amendment. For the reasons discussed below, Applicant respectfully submits that all pending Claims 1 - 12 are allowable over the prior art applied in the Final Action.

The Advisory Action, which addressed only the Scott patent applied in the Final Action, maintained the rejection of the claims for the following reasons:

"Applicant's arguments are not persuasive. As to the arguments that Scott fails to disclose that the varying of thickness of a material will not provide better wall contact (Page 3 Line 3), Scott teaches this limitation (Col. 2 Lines 16 - 27). As to the arguments that the material disclosed by Scott will enhance the strength to the body (Page 3 Line 8), there is no statement saying that the material of the Scott invention (either plastic or metal) will enhance the strength of the body in the rejection. The rejection, see Page 3 Lines 4 - 8 of the Final Rejection, is about the varying in material thickness, not the material. And Scott states that having a varying thickness will give strength to the body, and that the body will not lose strength (Col. 1, Lines 5 - 32)."

In response to the Advisory Action, Applicant has amended independent Claim 1 to more clearly define the nature of the invention by expressly reciting that the claimed tube-formed rock bolt is for drilling rock in bore holes in the earth. This amendment is supported, for example, at page 1, second and third paragraphs of Applicant's specification as originally filed.

In the Advisory Action, the Examiner states that the Scott patent teaches that varying the thickness of the wall plug provides better wall contact. Applicant respectfully disagrees with this conclusion. On the contrary, Scott teaches that it is the material from which the wall plug is made, namely a plastic material which enables the plug to provide better wall contact. The Scott patent states in pertinent part that:

"...owing to the fact that the plug is made of plastic material, it will readily be seen that when the plug is introduced into an orifice in a wall and a fastening member is screwed into the bore of the plug, this will cause the plug sections formed by the longitudinal slots to spread outwardly and tightly abut the surface which forms the hole or aperture in the wall." [Column 2, lines 19 - 27 of the Scott specification, emphasis added].

The Advisory Action also concludes that the Scott patent discloses that "varying the thickness [of the plug] still gives strength to the body, that the body will not lose strength". Applicant again respectfully disagrees with this conclusion. On the contrary, the Scott patent states, in pertinent part, that an

object of the invention is "...generally to provide a wall plug that will be durable in construction, efficient for its purpose, and inexpensive to manufacture." [Column 1, lines 30 - 33 of the Scott specification]. However, the purpose of the device disclosed by the Scott patent, namely a conventional type wall plug, is quite different in nature from the purpose of the invention disclosed and claimed in Applicant's pending application - namely, a rock bolt for drilling rock in bores in the earth. Stated in other words, the durability of a conventional household wall plug is distinctly different from the durability required of a rock drilling device.

As a result of the significant differences between the nature of the wall plug disclosed in the Scott patent, and the nature of rock drilling devices for use in bore holes in the earth, Applicant submits that it would not be obvious for one skilled in the relevant art, namely the rock drilling art, to combine the Scott patent, which is directed to problems different from those encountered by rock drilling devices, with prior art directed to the relevant subject matter, namely, rock drilling in bore holes in the earth. As a result of the distinctly different objectives of the wall plug disclosed by the Scott patent and the rock drilling device disclosed and claimed by Applicant, and as a further result of the differences in the problems encountered by the respective devices in their intended operating environments,

there is clearly no suggestion in the relevant art to combine the Scott patent with the other references applied in the final action to reject the pending claims. On the contrary, the only basis for such combination of non-analogous art must be derived from the use of Applicant's own disclosure as a guide for selectively combining different portions of different references. However, such hindsight, combination of only selective portions of "the right references in the right way", using Applicant's disclosure as a guide for the combination, is improper as a matter of law. See, for example, Orthopedic Equipment Co. v. United States, 217 USPQ 193 (Fed. Cir. 1983); In re Fritch, 23 USPQ 2d 1780 (Fed. Cir. 1992); and Micro-Chemical, Inc. v. Great Plains Chemical Co., Inc., 41 USPQ 2d 1238 (Fed. Cir. 1997).

For the reasons discussed herein and throughout the prosecution of this patent application, Applicant respectfully submits that all pending claims are in condition for allowance and favorable action is respectfully requested.

Respectfully submitted,



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